

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 WUSE ZONE 2, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.**

FCT/HC/CV/2037/2021

BETWEEN:

ALHAJI ABDULRAHMAN MOHAMMED-----APPLICANT
AND

- 1. CSP OLABISI DAVIES
 - 2. DIVISIONAL POLICE OFFICER (**DPO**)
LIFE CAMP DIVISION.
 - 3. COMMISSIONER OF POLICE FCT COMMAND
 - 4. INSPECTOR GENERAL OF POLICE
 - 5. ABDULRASHEED .A. EKUNGBA
 - 6. KADIRI .B. JUNAID.
- }-----RESPONDENTS

22-02-2022

SIMIAT SULEIMAN for the claimant.

D.A. Afolayan for the 6th respondent.

Parties are absent.

Court: Judgment is ready and read in open court.

JUDGMENT

Upon an originating motion brought pursuant Sections 46, 6(6) (B) 33, 34, 35, 36, 37, 39 and 41 of the 1999 Constitution of the Federal Republic of Nigeria as amended and Articles 5,6,9 and 12 of the African Charter on Human Peoples Rights(ratification & enforcement) Act Cap 10 LFN 1990 ACT CAP A9 LFN 2001.

Order 2 of the Fundamental Right Enforcement Procedure Rules 2009, and under the inherent power or jurisdiction of the Court.

The Applicant prayed the court for the following reliefs; thus

1. A Declaration that the 1st, 2nd, 3rd and 4th Respondents lack the power and authority to invite, inquire and/or investigate a purely civil commercial transaction between the applicant and the 6th Respondent as per the purported agency fees.
2. A declaration that the 1st, 2nd, 3rd and 4th Respondents lack the power and authority to invite the Applicant by virtue of a letter of invitation dated 16th of August, 2021 over a civil transaction of debt recovery which was already struck out on the 22nd October 2019 at an Upper Area Court in ***SUIT NO: CV/03/2019 Kado Estate Abuja between Abdulrasheed .A. Ekungba Vs. Alh. Abdulrahman Mohammed & Anor(Kadiri .B. Junaid)***
3. A declaration that the 1st, 2nd, 3rd and 4th Respondents lack the power and authority to abuse the Applicants fundamental right to life, liberty, freedom of movement under the guise of investigating a pure civil transaction arising from the agency relation with the applicant and the 6th Respondent.
4. An Order restraining the 1st, 2nd, 3rd and 4th Respondents from inviting, arresting, detaining or otherwise harassing or otherwise abusing Fundamental Right of the applicant in connection with any civil transaction entered by him and the 5th and 6th Respondent in thus said.
5. An Order of perpetual injunction restraining the 1st, 2nd, 3rd and 4th Respondents, their agents, officers or hirelings from further inviting, interrogating, arresting or detaining the Applicant or howsoever breaching his fundamental Rights.
6. The omnibus Order: The application was predicated upon 9 grounds as outlined on the face of the claimant/Applicant's process thus;
 - (a) That the applicant has Constitutional and fundamental right to life, liberty, freedom of movement and private and family life.
 - (b) That the applicant has right to seek the protection of his fundamental rights anytime such rights are threaten or about to be abuse in consonance with section 46 of the Constitution of Federal Republic of Nigeria, 1999(As Amended).
 - (c) That the 1st and 2nd respondents have meddle into a purely civil

transaction as per the completed agency transaction with the 6th respondent sometimes in the year 2019 with the aim of recovering a purported agency fees for the 5th and 6th respondents without recourse to the power and the fundamental rights of the Applicant.

- (d) That the 1st and 2nd respondents have yielded to the demand of the 5th and 6th respondents to abuse the Applicant's fundamental rights by inviting him via a letter dated 16th of August, 2021, arresting him, detaining him and forcing him to make payments of the purported agency fees to 5th and 6th respondents.
- (e) That the applicant was invited sometimes in the month of March 2021 to the life camp police station, FCT Command via a text message on issue of the payment of Agency fees of the 5th and 6th respondents which is purely a civil transaction.
- (f) That the purported Agency fee has been fully paid to the 6th respondent and receipt was duly issued to the applicant.
- (g) That since the applicant got wind of the letter of invitation, he had suffered damages, trauma, indignation, discomfort, distress, hardship and embarrassment as a result of the pending invasion of his fundamental human right by the respondents.
- (h) That the Applicant will suffer infringement of his fundamental human right to personal liberty, fair hearing, freedom of movement and right to own property cognizable and guaranteed by Sections 34,35,36(5), 41 and 44 of the Constitution of the Federal Republic of Nigeria(supra); Articles 6,7(1)(c), 12 (1) and 14 of the African Charter on Human and Peoples Rights(Enforcement and Ratification) Act(supra)
- (i) That the applicant will suffer damages, trauma, indignation, discomfort, distress, hardship and embarrassment as a result of the massive invasion of his fundamental human right by the respondents if they are not stopped.

The said application was accompanied by a 28 paragraph affidavit deposed to by the applicant one Alhaji Abdulrahman Mohammed, annexed the said application

is a written address which was argued and adopted by learned counsel to the applicant as their argument to support their evidence. When hearing was fixed. On the 20-1-22 the applicant was not in court, as well as the 1st -4th and 6th Respondents. However the 5th respondent in court.

Learned counsel to the applicant Dayo Ashonibare Esq. moved the court for a pending application while learned counsel to the 6th respondent one D.A. Afolayan and one A.R. Ekengba Esq. Counsel to the 5th respondent were in court and served with the applicant's process but had not filed any response to same.

Learned counsel informed the court they were just served a few days to the adjourned date but did not deny service on their client i.e. the 5th respondent, they admitted being served precisely on the 21/1/2022.

However, on the 17/2/22 when court adjourned the matter for judgment from the last adjourned date i.e. 10/2/22, learned counsel to the 6th respondent one D.A Afolayan who was in court informed the court that she has a pending application precisely a Motion on Notice in the interest of fair hearing.

Learned counsel moved her motion on notice dated and filed on the 14/2/22 brought pursuant to Section 6(6) of the 1999 Constitution, Order 49 rule 4 of the High Court rules and under the inherent jurisdiction of the court, praying for leave to extend time within which to file their counter-affidavit out of time and deeming same as properly filed and served on the Applicant which the court granted.

Learned counsel to the Applicant choosed to reply on points of law orally. The 6th respondent relied on all the averments of their 17 paragraphs affidavit and formulated 3 issues for determination as annexed Exhibit "A" adopted same before the court and prayed the court to dismiss the Applicant's application.

Learned counsel to the claimant submitted that, because of the time service was effected and the court overruling their objection to the 6th respondent's motion for extension of time to put their counter-affidavit, he will opt to reply orally on points of law to save the time of the court, hence leave was granted.

In their submissions, learned counsel to the claimant stated they rely on averments contained in the 6th respondent's counter affidavit, that have further confirmed to the court that the business between the claimant and 6th respondent specially is purely civil and that no amount is pleaded to support any agency relationship even though one is acknowledged by both the 6th respondent and the claimant, no any evidence was led to show any agreement binding the claimant to 6th respondent or 5th to claiming any agency fee as alleged in their counter especially to the stated amount of N 13....

Learned counsel further submitted that from the totality of evidence so far led, nothing disclosed to the court that any fact **or relationship defined** from a civil relationship between the 6th respondent especially, and therefore Exhibit 'A' annexed to the counter further confirms to the court that fact.

At the close of evidence, the case was finally adjourned for judgment.

Matter was adjourned for definite hearing.

On the next adjourned date for definite hearing, only learned counsel to the applicant appeared in court, the 6th respondent was in court also, and informed the court that his counsel is yet to come to court.

Learned counsel to the applicant moved the court to proceed as all respondents were well represented in court as at the last adjourned date. To wit: the court obliged counsel and proceeded.

Learned counsel moved their application and prayed the court to grant their prayer as sought on the face of the their application. Learned counsel informed the court that no response was filed on behalf of all the respondents and therefore in the absence of any pending application urged the court for a date to enter judgment in their favour. Hence this judgment.

Having gone through the application and listened to arguments proffered at trial, it is incumbent to in determining this suit to set out one issue for determination which is whether or not the claimant is entitled to the reliefs sought by way of declaration sought before this court?

A good starting point will be looking at the position of law vis-a-viz power of court to make declarations regarding enforcement of fundamental and human rights,

The Supreme Court per Eso JSC in RANSOME KUTI VS. ATTORNEY GENERAL OF FEDERATION, stated that a fundamental right is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself.

It is a primary condition to a civilized existence and what have been done by our Constitution, since Independence, that is Nigeria (Constitution) Order in council 1960 up to the present Constitution that is the Constitution of the Federal Republic of Nigeria 1990(the latter does not apply to this case: it is the 1963 Constitution that applies) is to have these rights enshrined in the Constitution so that the rights could be “immutable” to the extent of the “non-immutability” of the Constitution itself.

It is worthy to note that, the prevalence of Constitutional democracy as the normative system of government in many countries has increased the stature of fundamental rights and has cemented their pedigree in the civil and socio-political space. Thus the need to protect and enforce them attract serious consideration whenever this specie of rights is threatened, as such the courts are under obligation to protect fundamental rights as the rights cannot be waived even by the state. See the case of AMEACHI VS. INEC(2008) 5 NWLR(pt.1080) 227 at 448 paragraphs F-G, SC per ADEREMI JSC held thus;

“That a court particularly a court of last resort has a fundamental duty to safeguard fundamental rights of citizens admits of no doubt. A right that inures to the benefit of the entire public can never be waived. Nobody not even the State can waive the rights entrenched in statutory or Constitutional provisions which have been made in favour of the whole Country...” Chapter 4 of the 1999 Constitution has been dedicated to ensuring not just the fundamental rights of Nigerian citizens but also guaranteed those rights. See the case of ADETONA VS. IGELE GENERAL ENTERPRISE LTD.(SC)

In the instant case before the court, the applicant is seeking this court to ensure and guarantee his rights to personal liberty, freedom of movement, and right to life, family and private as well as perpetual injunction restraining the 1st, 2nd, 3rd and 4th defendants from further harassing him, arresting him, detaining him and forcing him to make payments of a purported agency fee to the 5th and 6th Respondents.

Exhibits A and B respectively annexed to the Applicant's application has shown that the applicant paid a sum of N2.5 Million in payments and was receipted and deposited to in paragraphs 10 and 11 of his affidavit. The applicant equally averred in his affidavit that the 6th defendant offered to assist him look for a place he can use as a warehouse and the applicant paid the sum of N2.5 Million to the 6th respondent after securing the warehouse and that the last N1 Million he paid to the 6th respondent he insisted it was the final payment so that the 6th respondent does not persistently keep demanding money from him. In Exhibit D, of the claimant's application, messages exhibited disclosed that the applicant's averment as deposed to in his affidavit particularly paragraphs 5-10 disclose a pay slip before the transaction in issue.

Having analyzed the above, it is crystal clear that the following facts were established at trial.

1. That the applicant recognized the fact that the 6th respondent is aware of the transaction of securing a warehouse for him and that they two know each other.
2. That the applicant was invited by the police as exhibited in exhibit E.
3. That exhibits 'A' and 'B' show a payment of N1.5 Million and N1 Million was made and receipted to the 6th respondent, further confirmed is the 6th respondent counter-affidavit Exhibit 'A'.
4. It was established that series of messages were sent to the applicant by the 6th respondent as shown in Exhibits "A and B" of the claimant's application and Exhibit 'A'
5. That the claimant by the content of the Exhibit 'E', an invitation letter to the claimant by the police proves averment contained in paragraph 21 of

the affidavit attached to the averments of the 6th respondents counter affidavit.

In the light of the foregoing, it is my view that judgment is entered for the claimant as per his application before the court.

Consequently, it is declared that the 1st, 2nd, 3rd and 4th respondents lack the power and authority to invite, or inquire into the civil commercial transaction between the applicant and the 6th respondent.

It is Ordered that 1st, 2nd, 3rd and 4th respondents lack any authority to abuse the applicant's fundamental rights to life, liberty and freedom of movement relating to invitation or investigation as per the transaction between him and the 6th respondent.

It is also Ordered that the 1st, 2nd, 3rd and 4th respondents are restrained from inviting, arresting or detaining, or harassing or abusing the applicant fundamental rights as it relates to the 5th and 6th respondents civil transaction.

Having gone through these facts as established, the question begging for an answer will be whether or not the applicant/claimant had proven their case on the scale of proof required in civil matter which is on balance of probability.

My humble view will be in the affirmative, It is not for the court to speculate or run on an errand to look for evidence where none is placed before it. The contents of Exhibits 'A', 'B', 'C', and 'D' attached by the claimants as admitted in evidence before the court speaks for themselves.

No agency contract, relationship has been proven before this court to warrant any speculation as to why the 6th defendant or any of the defendants claim can be sustained.

Likewise mere denial of the 1st - 4th respondents involvement by the 6th respondent court cannot displace the contents of Exhibits 'E' i.e. Police invitation letter to the Applicant as affidavit evidence cannot disprove documentary evidence.

Therefore by that Exhibit the court is more likely to believe that the rights of the claimant are being infringed and as such entered judgment in his favour.

Consequently, it is declared that the 1st -4th respondents lack the power and authority to invite, or inquire into the civil commercial transaction between the applicant and the 6th respondent.

It is Ordered that the 1st,2nd, 3rd and 4th respondents lack any authority to abuse the applicant's fundamental rights to life , liberty and freedom of movement relating to invitation or investigation as per the transaction between him and the 6th respondent.

It is also declared that the 1st,2nd, 3rd and 4th respondents are restrained from inviting, arresting or detaining, or harassing or abusing the applicant fundamental rights as it relates to the 5th and 6th respondents civil transaction.

No further Orders are made in this suit.

Any dissatisfied party has a right to appeal within 30 days.

Signed

Hon. Judge

22/02/2022.